



**COMMONWEALTH of VIRGINIA**  
DEPARTMENT OF ENVIRONMENTAL QUALITY

VWP Individual Permit Number 10-1938

Effective Date: August 19, 2011

Expiration Date: August 18, 2026

**VIRGINIA WATER PROTECTION PERMIT  
ISSUED PURSUANT TO THE STATE WATER CONTROL LAW  
AND SECTION 401 OF THE CLEAN WATER ACT**

Based upon an examination of the information submitted by the owner, and in compliance with § 401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

**Permittee:** Guy B. Dixon, Kyanite Mining Corporation

**Address:** PO Box 486, Dillwyn, VA 23936

**Activity Location:** Ski Pond, Willis Mountain, Buckingham County, Virginia

**Activity Description:** This is a water withdrawal permit. Water will be use to supplement mining water supply operations.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions and Attachment A, Drought Conditions.

A handwritten signature in blue ink, reading "Robert J. Weld".

Robert J. Weld  
Regional Director, Blue Ridge Regional Office  
Virginia Department of Environmental Quality

A handwritten date in blue ink, reading "August 19, 2011".

Date

A. *Authorized Activities*

This permit authorizes the average daily withdrawal of 0.36 Million Gallons Per Day (MGD) of surface water from Ski Pond, an impoundment on Whispering Creek, as shown in “Ski Pond – Water Withdrawal” Aerial Photo Plan dated December 6, 2010 and prepared by Kyanite Mining Corporation.

B. *Permit Term*

This permit is valid for 15 years from the date of issuance. A new permit may be necessary for the continuance of the authorized activities, including water withdrawals, or any permit requirement that has not been completed. At least 120 calendar days prior to the expiration of this permit, the permittee shall notify DEQ in writing of its intent to continue one or more of the authorized activities. A new permit application may be required by DEQ at that time. DEQ, acting on behalf of the State Water Control Board, may issue a new permit or may issue a new permit with new or modified conditions, or the board may deny the issuance of a permit at that time.

C. *Reopener*

This VWP permit authorization may be reopened to modify its conditions when the circumstances on which the initial VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP permit authorization was issued and thereby constitute cause for VWP permit authorization revocation and reissuance. Specifically, the permit may be reopened if monitoring and reporting requirements of the initial authorization do not provide sufficient data to verify the permit is protective of beneficial uses

D. *Standard Project Conditions*

1. The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. As defined in §62.1-10(b) of the Code, “beneficial use” means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.
2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water.
3. Flows downstream of the project area shall be maintained to protect all uses.

4. The activity shall not impede the passage of normal or expected high flows, and any associated structure shall withstand expected high flows.
5. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters.
6. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.
7. Stormwater runoff shall be prohibited from directly discharging into any surface waters. Best management practices (BMP) designed, installed, and maintained, as described in the Virginia Erosion and Sediment Control Handbook (Third Edition, 1992, or the most recent version in effect at the time of construction) and the Virginia Stormwater Management Handbook (First Edition, 1999, or the most recent version in effect at the time of construction), shall be deemed suitable treatment prior to discharge into surface waters. Installation of alternative practices not described in these references shall be submitted to DEQ for approval prior to beginning construction.
8. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction. These controls shall be placed prior to clearing and grading activities and shall be maintained in good working order, to minimize impacts to surface waters. These controls shall remain in place only until clearing and grading activities cease and these areas have been stabilized.

E. *Water Withdrawal and Instream Flow Conditions*

1. Definitions. When used in reference to the withdrawal activities in Ski Pond, the following definitions apply:

“Estimated Inflow” is a value calculated once per week, to be determined by measuring the permitted useable storage in ski pond and subtracting the following: volume of water withdrawn, volume of water released downstream (downstream flow from Ski Pond), and estimated evaporation.

$$\text{Estimated Inflow (MGD)} = \text{Volume of Ski Pond}^1 - [\text{Water Withdraw (MDG)} + \text{Volume Released from Ski Pond (MGD)}]$$

“Permitted Useable storage” is the volume of water in Ski Pond at a particular time that is available for routine water withdrawal. It consists of all that volume of water within Ski Pond located at a height above the outfall. The volume of

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<sup>1</sup> Obtained weekly via pond elevation measurements

usable storage at a given time depends upon the water surface elevation (which shall be determined by observation).

2. The maximum *daily* volume of surface water withdrawn from Ski Pond shall not exceed 0.54 million gallons (mg).
3. The maximum *annual* volume of surface water withdrawn from Ski Pond shall not exceed 131.4 million gallons (mg).
4. The intake will be fitted with 3/8" mesh and withdrawal rate shall not exceed 5.67 feet per second (ft/s).
5. All water withdrawal activities must cease if 0.76 cubic feet second (0.48 MGD) is not flowing out Ski Pond to Whispering Creek.

F. *Monitoring, Notification, and Reporting*

**Monitoring**

1. The permittee shall record once per week the elevation of Ski Pond. They will use this elevation and an established benchmark to calculate the percent of full that the recorded elevation represents. This value shall be used to determine permitted usable storage.
2. The permittee shall record the daily volume of water (million gallons) that is withdrawn from Ski Pond.
3. The permittee shall monitor once per week stream discharge (release flow from Ski Pond).
4. The permittee shall use the pond elevation data, water withdraw records, records of release flow from Ski Pond to Whispering Creek, and estimated evaporation data to determine and record calculated inflow.
5. Should DEQ determine that impacts to downstream beneficial uses have occurred as a result of the authorized project, DEQ may require the installation of a stream gage on Whispering Creek and monitoring requirements that differ from those specified herein. Such revisions may require that this permit be modified in accordance with the Virginia Water Protection Permit Program Regulation 9VAC25-210 in effect at that time.
6. In the event that the Governor or the Virginia Drought Coordinator declares a drought emergency in the Middle James Drought Evaluation Region, which includes but is not limited to Buckingham County, the permittee shall implement either the provisions directed by the declaration, or the mandatory conservation measures detailed in Appendix A of this permit, whichever is most restrictive. The permittee shall be responsible for determining when drought emergencies are declared.

### **Notification**

7. The permittee or authorized contractor shall immediately notify the DEQ Blue Ridge Regional Office in Lynchburg at 434-582-5120 upon the discovery of any fish kills or spills of fuels or oils. If DEQ cannot be reached, the permittee or authorized contractor shall notify the Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.
8. The permittee shall notify DEQ within two business days of determining that additional impacts to surface waters or modifications to the overflow structure, spillway, or other project structures are necessary. Any additional surface water impacts or changes to the project structures shall be subject to DEQ review and approval and may result in the modification of this permit or compensatory mitigation.

### **Reporting**

9. The permittee shall report all authorized surface water withdrawals to the DEQ Office of Surface and Groundwater Supply Planning at P.O. Box 1105, Richmond, Virginia, 23218 by **January 31<sup>st</sup>** of the year following the year in which the withdrawals occurred. *Reporting surface water withdrawals in accordance with the conditions of this permit satisfies the reporting requirement for the Water Withdrawal Reporting Regulation 9VAC25-200-10 et seq.* The annual monitoring report shall contain the following information at a minimum:
  - a. the permittee's name and address;
  - b. the VWP permit number (10-1938);
  - c. the permittee's assigned facility identification number for reporting surface water withdrawals under 9VAC25-200-10 et seq;
  - d. the calendar date;
  - e. the inflow (cfs), estimated weekly, into Ski Pond;
  - f. the elevation and percent full values, estimated weekly, for the Ski Pond;
  - g. the required (based on flow data and calculations) released flow in cfs or million gallons per day (mgd), calculated weekly, to Whispering Creek;
  - h. the daily volume of water (million gallons) that is withdrawn from Ski Pond;
  - i. the method of measuring the withdrawal;

- j. the largest single-day volume withdrawn (million gallons) that occurred in the reporting year, and the month in which it occurred; and
  - k. the dates on which mandatory water conservation measures were implemented in the service area supplied by the authorized surface water withdrawal, if any.
10. All reports required by this permit and other information requested by DEQ shall be signed by the permittee, or a person acting on the permittee's behalf as a duly authorized representative with the authority to bind the permittee.

A person is a duly authorized representative only if 1) the authorization is made in writing by the permittee; AND 2) the authorization specifies either the named individual or the named position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility.

If a change of the duly authorized representative occurs, the permittee shall immediately notify DEQ in writing, providing the new named individual or named position and contact information for the new duly authorized representative.

11. All submittals to DEQ shall contain the following signed certification statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”